



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 31, 1995

Mr. Michael R. Little  
District Attorney  
Liberty and Chambers Counties  
P.O. Box 4008  
Liberty, Texas 77575

OR95-174

Dear Mr. Little:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 31763.

The Office of the District Attorney of Chambers and Liberty Counties (the "district attorney") has received a request for information relating to a capital murder case styled *State of Texas v. Michael Lynn Rollins*. Specifically, the requestor seeks "files maintained by your office in the murder of Sam Battell, January 21, 1988," and "records on the investigation of Sheldon Cadoree and Ewell Jenkins in connection with this or other cases in which they may have been involved since 1986," including "all records and documents pertaining to or arising from (1) the investigation of the criminal incident, (2) the trial of the underlying matter, and (3) the investigation or prosecution of any proceedings after trial, including motions for new trial, and the direct appeal." You have submitted a representative sample of the requested information to us for review.<sup>1</sup> You claim that the district attorney is not subject to the Open Records Act. In the alternative, you claim that sections 552.101, 552.103, and 552.108 of the Government Code except the requested information from required public disclosure.

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<sup>1</sup>In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499, 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

As you point out, section 552.003(b) specifically excludes the judiciary from the definition of "governmental body." Section 552.003(a)(10) provides, in part, that a "governmental body" is any "part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds." Gov't Code § 552.003(a)(10). You argue that this definition is inapplicable to the district attorney because the district attorney's office is created under article V of the Texas Constitution, which establishes the "Judicial Department," and is therefore a part of the judiciary.

This very issue was addressed in Attorney General Opinion JM-266 (1984), of which you here seek reconsideration. In that opinion, this office determined that a district attorney was a part of the judicial department but did not fall within the judiciary exception to the Open Records Act. This office held that the intent of the legislature in enacting this statute was to exclude only courts from the scope of the act, rather than every part of the judicial department. Attorney General Opinion JM-266 (1984) at 2. The legislature's specific inclusion of commissioners courts in the act supports this view since commissioners courts, like district attorneys, are created in the judicial article of the Constitution. *Id.*; see also Open Records Decision No. 78 (1975) (holding that county sheriff's office, although created under judicial article of Texas Constitution, is not within act's judiciary exception).

The purposes of the judiciary exception were discussed in *Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.--San Antonio 1983, no writ), in which a member of the public wished to inspect applications for the position of juvenile probation officer submitted to a county juvenile board. The court determined that the juvenile board, although composed of judges, was not a part of the judiciary within the meaning of V.T.C.S. article 6252-17a section 2(1)(H) (now Gov't Code § 552.003(b)) because it performed administrative, not judicial, functions and was not under the control or supervision of a court. Thus, whether an entity falls within the judiciary exception involves an analysis of that entity's function and whether it is controlled or supervised by a court. See also Attorney General Opinion JM-466 (1986); Open Records Decision Nos. 553 (1990); 417 (1984); compare with Open Records Decision No. 572 (1990) (county personal bond office does not fall within judiciary exception except in conducting investigations and preparing reports under Code of Crim. Proc. art. 17.42, as board in such cases functions as arm of court).

As Attorney General Opinion JM-266 (1984) makes clear, a district attorney's office does not fall within the judiciary exception because it is not a court and is not directly controlled or supervised by one. Moreover, its functions are primarily executive in that its primary duty is to enforce the law. Attorney General Opinion JM-266 (1984) at 3. Thus, under the *Benavides* test, the district attorney's office does not fall within the judiciary exception. Because a district attorney's office is not otherwise defined as a "governmental body" in section 552.003 of the Government Code, whether it is subject

to the Open Records Act turns on whether it is supported by or expends public funds. Gov't Code § 552.003(a)(10). The district attorney's office is clearly supported by and expends public funds. It is therefore a "governmental body" within the meaning of section 552.003. The district attorney must release the requested information unless it falls within one of the exceptions enumerated in subchapter C of the Open Records Act. You claim that sections 552.101, 552.103, and 552.108 of the Government Code except the requested information from required public disclosure.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). In this instance you have made the requisite showing that the requested information relates to anticipated litigation for purposes of section 552.103(a).<sup>2</sup>

We note, however, that the opposing party to the litigation has previously had access to some of the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, for example, through discovery or otherwise, no section 552.103(a). Open Records Decision Nos. 349, 320 (1982). Specifically, we conclude that the voluntary statement of the person on whose behalf the request here is made may not be withheld under section 552.103(a).<sup>3</sup> With the exception of this statement, however, and any other information to which the requestor or his client has already been given access, the district attorney may withhold the requested information under section 552.103(a) of the Government Code.

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<sup>2</sup>We note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

<sup>3</sup>We also conclude that you may not withhold this information under section 552.108 of the Government Code. In cases that are still under active investigation, section 552.108 excepts from disclosure all information except that generally found on the first page of the offense report. *See generally Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Otherwise, when the "law enforcement" exception is claimed, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how its release would unduly interfere with law enforcement or crime prevention. Open Records Decision No. 434 (1986) at 3 (citing *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). Although you claim that the requested information relates to a pending investigation, you have not submitted any information sufficient to support this claim. On the other hand, the information submitted to us for review indicates that the investigation was concluded about six years ago and that since that time, no further investigation has ensued. We assume, therefore, that the requested information does not relate to a pending law enforcement investigation. Moreover, you do not explain how release of the requested information would unduly interfere with law enforcement.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script that reads "Margaret A. Roll".

Margaret A. Roll  
Assistant Attorney General  
Open Government Section

MAR/GCK/rho

Enclosures: Submitted documents

Ref.: ID# 31763

cc: Mr. David P. Sheldon  
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(w/o enclosures)